

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

DAVID and PATRICIA ROBERTS,
individually and in their
capacity as parents of
KEVIN ROBERTS,

Appellants,

v.

BOARD OF TRUSTEES OF SCHOOL
DISTRICT 64J; MARK BRANGER,

Respondents.

OSPI 190-90

DECISION AND ORDER

* * * * *

STATEMENT OF THE CASE

Mark Branger is a tenured teacher at the Melstone School. On March 26, 1990, the Board of Trustees of School District 64J held a hearing pursuant to Section 20-4-207, MCA, to consider the recommendation of Superintendent Kline for dismissal of Mr. Branger for immorality and unfitness. At the conclusion of the hearing the Board voted unanimously to reject the recommendation.

On April 23, 1990, the Roberts', parents of a child involved in the alleged acts of misconduct of Branger, appealed the decision of the Board of Trustees to the Musselshell County Superintendent of Schools. The County Superintendent entered her Findings of Fact, Conclusions of Law and Order on July 24, 1990, granting Respondent Branger's Motion to Dismiss and holding that "only teachers have the right to appeal to the County

1 Superintendent pursuant to Section 20-4-207, MCA." The County
2 Superintendent concluded that the Roberts' had no standing to
3 contest the decision of the Board of Trustees.

4 DECISION AND ORDER

5 The State Superintendent of Public Instruction has
6 jurisdiction of this appeal in accordance with Section 20-3-107,
7 MCA. Having reviewed the complete record and heard oral
8 argument, this Superintendent affirms the decision of the County
9 Superintendent.

10 MEMORANDUM OPINION

11 The standard of review by the State Superintendent is set
12 forth in ARM 10.6.125. This rule was modeled upon Section 2-4-
13 704, MCA, and the Montana Supreme Court has interpreted the
14 statute and the rule to mean that agency (County Superintendent)
15 findings of fact are subject to a clearly erroneous standard of
16 review and that conclusions of law are subject to an abuse of
17 discretion standard of review. Harris v. Bauer, ____ Mont. ____,
18 749 P.2d 1068, at 1071, 45 St. Rptr. 147, at 151, (1988).
19 Further, the petitioner for review bears the burden of showing
20 that they have been prejudiced by a clearly erroneous ruling.
21 Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151,
22 at 153 (1986). Findings are binding on the court and not
23 "clearly erroneous" if supported by "substantial credible
24 evidence in the record." Id. This has been further clarified to
25 mean that a finding is clearly erroneous if a "review of the

1 record leaves the court with the definite and firm conviction
2 that a mistake has been committed." Wage Appeal v. Board of
3 Personnel Appeals, ____ Mont. ____, 676 P.2d 194, at 198 (1984).

4 The parties set forth numerous "facts" regarding the basis
5 for the decision of the Board as to Branger's dismissal.
6 Appellants further argue the broad jurisdiction of County
7 Superintendents to hear contested matters. There is no
8 disagreement that the jurisdiction of the County Superintendents
9 to hear appeals is indeed very broad. Canyon Creek Education
10 Association v. Board of Trustees, Yellowstone County School
11 District No. 4, ____ Mont. ____, 785 P.2d 201, 47 St.Rptr. 93
12 (1990). However, the issue before this Superintendent is not the
13 merits of the dismissal nor the jurisdiction of a County
14 Superintendent to hear an appeal of a dismissal, but whether the
15 Roberts' have standing to appeal a decision of the Board of
16 Trustees pursuant to action under Section 20-4-207, MCA.

17 By reason of their special interests, parents have a very
18 broad standing to contest actions that allegedly affect them or
19 their children adversely. However, in the instant case,
20 Appellants are attempting to appeal a decision regarding
21 dismissal of a tenured teacher while under contract which was
22 initiated and processed in accordance with the provisions set out
23 by the legislature in statute. Section 20-4-207(5), MCA, states
24 that "any teacher who has been dismissed may in writing within 10
25 days appeal such dismissal to the county superintendent."

1 (Emphasis supplied). That specific language controls the more
2 general language found in Section 20-3-210, MCA.

3 DATED this 20 day of March, 1991.

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Nancy Keenan
NANCY KEENAN

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CERTIFICATE OF SERVICE

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THIS IS TO CERTIFY that on this 20th day of March, 1991, a
true and exact copy of the foregoing DECISION AND ORDER was
mailed, postage prepaid, to the following:

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